IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

MELISSA LAVERNE WATERS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 01-145-SLR
	)	
LINDA EVANS, STANLEY TAYLOR, and PATRICK RYAN,	)	
	)	
	)	
Defendants.	)	

MEMORANDUM ORDER

I. INTRODUCTION

On March 2, 2001, plaintiff Melissa Laverne Waters filed this action against defendants Linda Evans, Stan Taylor and Patrick Ryan alleging civil rights violations under 42 U.S.C. § 1983 in that "medical neglect" violated her Eighth Amendment right to be free from cruel and unusual punishment. (D.I. 2 at 3) Currently before the court are defendants' motions to dismiss the complaint for failure to exhaust administrative remedies and for failure to state a claim. (D.I. 12, 14) For the reasons stated below, defendants' motions to dismiss are granted.

II. BACKGROUND

Plaintiff is an inmate within the Delaware Department of Correction and is housed at the Baylor Women's Correctional Institution ("BWCI") in New Castle, Delaware. Plaintiff was

diagnosed with Crohn's Disease in 1993, and has since undergone several surgeries, including a resection of the anus, colectomy and ileostomy. (D.I. 12, Ex. A at 10, 15) On November 8, 2000, plaintiff claims that she asked a correction officer to call the prison medical facility to request a new ileostomy bag because the one that she was wearing was leaking feces. (D.I. 2 at 3) Plaintiff alleges that she was not allowed to have a new bag because "they had told me I could only have a bag once a week," and that a nurse unsuccessfully attempted to tape the existing bag. (Id.) Plaintiff claims that another nurse called defendant Linda Evans, the head nurse, who determined that plaintiff could wear the "same bag for a couple more days." (Id.) Plaintiff's medical records indicate that on April 9, 2001, plaintiff was allowed two ileostomy bags per week. (D.I. 12, Ex. A at 27) Appended to plaintiff's complaint is a grievance form that plaintiff filed over the incident to which prison administration allegedly did not respond. (D.I. 2 at 2)

III. STANDARD OF REVIEW

Because the parties have referred to matters outside the pleadings, defendants' motions to dismiss shall be treated as motions for summary judgment. See Fed. R. Civ. P. 12(b)(6). A party is entitled to summary judgment only when the court

concludes "that there is no genuine issue of material fact and that the party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party bears the burden of proving that no material issue of fact is in dispute. See Matsushita Elec. Indus. v. Zenith Radio Corp., 475 U.S. 574, 586 n.10 (1986). Once the moving party has carried its initial burden, the nonmoving party "must come forward with 'specific facts showing that there is a genuine issue for trial.'" Id. at 587 (quoting Fed. R. Civ. P. 56(e)). "Facts that could alter the outcome are 'material', and disputes are 'genuine' if evidence exists from which a rational person could conclude that the position of the person with the burden of proof on the disputed issue is correct." Horowitz v. Fed. Kemper Life Assurance Co., 57 F.3d 300, 302 n.1 (3d Cir. 1995). If the nonmoving party fails to make a sufficient showing on an essential element of his case with respect to which he has the burden of proof, the moving party is entitled to judgment as a matter of law. See Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). The mere existence of some evidence in support of the nonmoving party will not be sufficient for denial of a motion for summary judgment; there must be enough evidence to enable a jury reasonably to find for the nonmoving party on that factual issue. See Anderson v. Liberty Lobby,

Inc., 477 U.S. 242, 249 (1986). The court, however, must "view all the underlying facts and all reasonable inferences therefrom in the light most favorable to the party opposing the motion." Pa. Coal Ass'n v. Babbitt, 63 F.3d 231, 236 (3d Cir. 1995).

IV. DISCUSSION

A. Exhaustion of Administrative Remedies

Defendants argue that plaintiff did not exhaust her administrative remedies prior to filing this action pursuant to the Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a).[1] Before filing a civil action, a plaintiff-inmate must exhaust her administrative remedies, even if the ultimate relief sought is not available through the administrative process. See Booth v. Churner, 206 F.3d 289, 300 (3d Cir. 2000), cert. granted, 531 U.S. 956 (2000), aff'd, 121 S. Ct. 1819 (2001). See also Ahmed v. Sromovski, 103 F. Supp.2d 838,

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[4]The PLRA provides, in pertinent part:

> No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

42 U.S.C. § 1997e(a).

843 (E.D. Pa. 2000) (quoting Nyhuis v. Reno, 204 F.3d 65, 73 (3d Cir. 2000) (stating that § 1997e(a) "specifically mandates that inmate-plaintiffs exhaust their available administrative remedies"). In the case at bar, although the entire medical grievance procedure was not completed, plaintiff sufficiently pursued her administrative remedies by filing a grievance form. Thus, the court finds that plaintiff exhausted her administrative remedies.

B. Plaintiff's Eighth Amendment Claim

To state a violation of the Eighth Amendment right to adequate medical care, plaintiff "must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." Estelle v. Gamble, 429 U.S. 97, 106 (1976); accord White v. Napoleon, 897 F.2d 103, 109 (3d Cir. 1990). Plaintiff must demonstrate: (1) that she had a serious medical need, and (2) that the defendant was aware of this need and was deliberately indifferent to it. See West v. Keve, 571 F.2d 158, 161 (3d Cir. 1978); see also Boring v. Kozakiewicz, 833 F.2d 468, 473 (3d Cir. 1987).

The seriousness of a medical need may be demonstrated by showing that the need is "'one that has been diagnosed by a physician as requiring treatment or one that is so obvious

that a lay person would easily recognize the necessity for a doctor's attention.'" Monmouth County Corr. Inst. Inmates v. Lanzaro, 834 F.2d 326, 347 (3d Cir. 1987) (quoting Pace v. Fauver, 479 F. Supp. 456, 458 (D.N.J. 1979)). Moreover, "where denial or delay causes an inmate to suffer a life-long handicap or permanent loss, the medical need is considered serious." Id.

As to the second requirement, an official's denial of an inmate's reasonable requests for medical treatment constitutes deliberate indifference if such denial subjects the inmate to undue suffering or a threat of tangible residual injury. See id. at 346. Deliberate indifference may also be present if necessary medical treatment is delayed for non-medical reasons, or if an official bars access to a physician capable of evaluating a prisoner's need for medical treatment. See id. at 347. However, an official's conduct does not constitute deliberate indifference unless it is accompanied by the requisite mental state. Specifically, "the official [must] know . . . of and disregard . . . an excessive risk to inmate health and safety; the official must be both aware of facts from which the inference can be drawn that a substantial risk of serious harm exists, and he must also draw the inference." Farmer v. Brennan, 511 U.S. 825, 837 (1994).

While a plaintiff must allege that the official was subjectively aware of the requisite risk, he may demonstrate that the official had knowledge of the risk through circumstantial evidence and "a fact finder may conclude that a[n] . . . official knew of a substantial risk from the very fact that the risk was obvious." Id. at 842.

While plaintiff's medical condition may constitute a "serious medical need," the court finds that there is no evidence to suggest that defendants Stan Taylor, Commissioner of the Department of Correction, and Patrick Ryan, Warden of BWCI, were personally involved in, or had knowledge of, the alleged incident. The record also indicates that defendant Linda Evans' denial of plaintiff's request for another ileostomy bag was a decision by a medical professional that does not rise to a constitutional violation. See Boring, 833 F.2d at 473 ("[C]ourts will not 'second-guess the propriety or adequacy of a particular course of treatment [which] remains a question of sound professional judgment.'") (citing Inmates of Allegheny County v. Pierce, 612 F.2d 754, 762 (3d Cir. 1979)). Thus, the court finds that there exist no genuine issues of material fact that defendants acted with "deliberate indifference" toward plaintiff's medical needs.

V. CONCLUSION

Therefore, at Wilmington, this 19th day of November, 2001;

IT IS ORDERED that defendants' motions to dismiss (D.I. 12, 14) are granted. The Clerk of Court is directed to enter judgment against plaintiff and in favor of defendants.

United States District Judge